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| APPLICATION NO.                                                                             | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.    | CONFIRMATION NO. |
|---------------------------------------------------------------------------------------------|-------------|----------------------|------------------------|------------------|
| 10/534,950                                                                                  | 05/16/2005  | Yasunobu Saito       | Nisshin-2/RCE(FP254US) | 1677             |
| 7265 7590 05/27/2009<br>MICHAELSON & ASSOCIATES<br>P.O. BOX 8489<br>RED BANK, NJ 07701-8489 |             |                      |                        |                  |
| EXAMINER<br>O HERN, BRENT T                                                                 |             |                      |                        |                  |
| ART UNIT                                                                                    |             | PAPER NUMBER         |                        |                  |
| 1794                                                                                        |             |                      |                        |                  |
| MAIL DATE                                                                                   |             | DELIVERY MODE        |                        |                  |
| 05/27/2009                                                                                  |             | PAPER                |                        |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/534,950

**Applicant(s)**

SAITO ET AL.

**Examiner**

Brent T. O'Hern

**Art Unit**

1794

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 April 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,5 and 7-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,5 and 7-9 is/are rejected.
- 7) ☒ Claim(s) 1 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 4/13/2009 has been entered.

### ***Claims***

2. Claims 1-2, 5 and 7-9 are pending.

## **WITHDRAWN REJECTIONS**

3. All rejections of record in the Office action mailed 12/15/2008 have been withdrawn due to Applicant's amendments in the Paper filed 4/13/2009.

## **NEW OBJECTIONS**

### ***Claim Objections***

4. Claim 1 is objected to because of the following informalities: line 10 states "to 0,7%". The comma appears to be a typographical error. Appropriate correction is required.

## **NEW REJECTIONS**

### ***Claim Rejections - 35 USC § 103***

5. Claims 1-2, 5 and 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oles (US 4,145,451) in view of Qiang, *The production of Starch modified by*

*alkenyl succinic anhydrides and its use in food industry (2000)*, Cain et al. (US 5,756,143) and Hamm et al. (US 2003/0203096).

Regarding claims 1, 5 and 8-9, Oles ('451) teaches an acid emulsified mayonnaise-like food (*See col. 2, ll. 60-69 and col. 1, ll. 62-68, including acetic acid/vinegar.*) comprising starch (*See col. 2, l. 67.*), thickening polysaccharide with a content of 0.3 to 0.7% by mass (*See col. 2, l. 66, where the polysaccharide gums content is from 0 to 15%.*), edible fat and oil having a content of 50 to 75% by mass (*See col. 2, ll. 60-69 and col. 3, ll. 56-60 where the oil content is from 0 to 60%. The corn and soy oils are known to a person having ordinary skill in the art to contain both oil and fat triglyceride molecules containing chains such as esterified chains of stearic acid, C18:0.*) wherein the content of protein is less than 0.5% by mass (*See col. 2, ll. 60-69 where the egg yolks and milk solids, possible sources of protein, are not required as they include values of zero. Furthermore, the claims include values of zero, thus, non limiting.*), however, fails to expressly disclose an esterified compound composed of a potato starch or a hydrolysate thereof and an alkenylsuccinic acid and an esterified compound composed of waxy cornstarch or a hydrolysate thereof and alkenylsuccinic acid where the content of the esterified compounds is 1.2 to 2.2% by mass, the mass ratio of the esterified compound to the thickening polysaccharide is from 2:1 to 10:1 per claim 5, and the alkenylsuccinic acid is octenylsuccinic acid.

However, Qiang teaches using an octenyl succinate starch which is an esterified compound comprising a starch or hydrolysate and an alkenylsuccinic acid at 1% and xanthan gum at 0.05% in salad dressings for the purpose of improving the dispersion of

the substances in the product, emulsion stability, appearance and taste (*See entire document.*). Regarding the mass ratio of claim 5, said ratio is typical and obtainable through routine optimization for a person having ordinary skill in the art.

Cain ('143) teaches the gum used in a dressing being xanthum gum at 0.4 wt % for the purpose of providing an emulsified dressing (*See col. 9, ll. 1-24.*).

Hamm ('096) teaches corn starch, waxy corn starch and potato starch as being alternative substitutes for mayonnaise-like sauce bases (*See para. 32.*) for the purpose of providing a thickened, stable sauce base (*See para. 32.*).

Therefore, it would have been obvious to a person having ordinary skill in the art the time Applicant's invention was made to use the above starch and gum as taught by Qiang, Cain ('143) and Hamm ('096) in Oles ('451) and the above ratios in order to provide a thickened food substance having improved stability, appearance and taste.

Regarding claim 2, Oles ('451) teaches the acid emulsified mayonnaise-like food further comprising an edible vinegar, salt and seasoning (*See col. 2, ll. 60-69 and col. 4, ll. 61-64.*).

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oles (US 4,145,451) in view of Qiang, *The production of Starch modified by alkenyl succinic anhydrides and its use in food industry* (2000), Cain et al. (US 5,756,143), Hamm et al. (US 2003/0203096) and Chen et al., *Preparation of Starch Sodium Alkenyl Succinate* (2000).

Oles ('451), Qiang, Cain ('143) and Hamm ('096) teach the food product discussed above, however, fail to expressly disclose wherein the degree of substitution of the ester groups are from 0.005 to 0.020.

However, Chen teaches using cornstarch to prepare alkenyl succinate starch with a degree of substitution of ester groups of 0.018, 0.017, 0.007, etc. for the purpose of providing a thickened food (*See entire document.*). Furthermore, as discussed above, corn starch, waxy corn starch and potato starch have similar compositions and structures and are substantially interchangeable.

Therefore, it would have been obvious to use a starch with the substitution as taught by Chen in Oles ('451) in order to provide a thickened food.

#### **ANSWERS TO APPLICANT'S ARGUMENTS**

7. In response to Applicant's arguments (*pp. 4-9, of Applicant's Paper filed 4/13/2009*) regarding Liao ('460), the primary reference, it is noted that said reference is no longer cited, thus, all arguments regarding such are moot.
8. In response to Applicant's arguments (*p. 5, para 4. to p. 9, para. 4 of Applicant's Paper filed 4/13/2009*) that since Qiang is liquid dressing it can not be used to teach the starch because Applicant's application is directed to a semi-solid dressing, it is firstly noted that Applicant's arguments are not commensurate in scope with the claims. The claims do not state the product is a semi-solid at any particular temperature or semi-solid at any temperature at all or any viscosity limitations. The Examiner is not going to read limitations into the claims from the Specification. If Applicant wishes to claim a semi-solid product at a given temperature then Applicant is advised to consider setting

forth such limitations in the claims. Furthermore, the Examiner does not cite Qiang as a primary reference but rather as a secondary reference to modify the primary reference. The Examiner does not suggest modifying Qiang by other references but rather modifying the primary reference by Qiang.

9. In response to Applicant's arguments (*p. 7, para 2. of Applicant's Paper filed 4/13/2009*) that Hamm ('096) is not an applicable reference because it has a publication date after the Japanese priority date for Applicant's application. It is noted as previously made of record that Hamm ('096) was filed April 25, 2002 which is prior to Applicant's priority date of November 25, 2002.

10. Applicant does not set forth any further specific arguments regarding the other secondary references than discussed above.

11. The declaration under 37 CFR 1.132 filed Akemi SATO is insufficient to overcome the rejection of claims 1-2, 5 and 7-9 based upon Qiang as set forth in the last Office action because the declaration is not commensurate in scope with the claims. Firstly, as discussed above, Qiang is not a primary reference but rather a secondary reference and the Examiner does not suggest modifying Qiang. Declarant asserts that Qiang's product is a liquid while Applicant's invention is a semi-solid, however, the claims do not set forth such limitations.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brent T. O'Hern whose telephone number is (571)272-0496. The examiner can normally be reached on Monday-Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BTO/  
Brent T. O'Hern  
Examiner  
Art Unit 1794  
May 21, 2009

/Elizabeth M. Cole/  
Primary Examiner, Art Unit 1794